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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/486,549	04/06/2004	Odd Terje Ostgaard	3111-24	2400

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EXAMINER

FOSTER, JIMMY G

ART UNIT PAPER NUMBER

3728

DATE MAILED: 02/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/486,549

Applicant(s)

OSTGAARD, ODD TERJE

Examiner

Jimmy G Foster

Art Unit

3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>8/2/04</u> . | 6) <input type="checkbox"/> Other: ____  |

Art Unit: 3728

1. The specification and claims are objected to as being replete with numerous typographical and idiomatic errors. Examples of such errors includes a lack of verb agreement in the wording, "must be in compliance with international regulations as specified in BS23720:1990; Sharps containers, which has been issued" (line 3 of paragraph 3 of page 1), a lack of verb agreement in the wording, "BS3720 lay down rules" (beginning line 5, paragraph 3 of page 1), a lack of a plural form or an article ("the" or "an") preceding a noun (or modified noun) in the wording, "are mainly used in industialised country" (beginning line 21 of page 2, an apparent typographical in the word "i" (line 25 of Figure 4), a wrong form of word in "with instructions for used" (claim 1, line 5), a wrong homonym in the word "witch" (line 7 of claim 1), a misspelled word or typographical error at the word "resirculated" (line 4 of claim 1). These are only just examples of the numerous errors which exist. However, Applicant is responsible for detecting and correcting all errors, including those indicated here and not indicated here. Correction is required in response to this Office action and may not be held in abeyance.

2. The drawings are objected to as failing to include a Figure 9 as required by the Brief Description of the Drawings on page 4 of the specification. Applicant is either required to provide a Figure 9 which agrees with the specification, without providing any new matter to the application, or to delete all reference to a Figure 9 in the specification. And such a change must be made in response to this Office action.

If a new figure is provided, corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid

Art Unit: 3728

abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

3. Claim 1 is also objected to as improperly incorporating essential subject matter by reference to a non-patent publication, by referring to the requirements of the WHO Performance Specifications E10/C.1 and E10/C.2.

4. Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The parenthetical wording "(combustion container)" in line 1 makes the claim indefinite since it is unclear whether the wording in the parentheses is a required limitation.

Art Unit: 3728

The limitation, "surgical waste material, for instance used syringes with - needles, discarded dressings, compresses etc." is indefinite since it is unclear what all other medical waste are covered by "etc" and since it is unclear whether any surgical waste is within the scope of the claim or just that waste which is listed.

In line 3 of the claim it is unclear what is covered by the wording "destruction/combustion". Is destruction using combustion the required, or is the function destruction or combustion?

Beginning line 6, the limitation, "a plurality of side flaps" appears to be an indefinite double recitation of a portion of the blank already introduced in the claim, since there is no relationship recited (in the claim) between the flaps and the blank, even though the disclosure essentially describes the flaps as being a part of the blank.

Additionally, claim 1 is indefinite because it is unclear what all requirements of the WHO Specifications recited are required by the claim. Moreover, the claim fails to indicate for which year-modification of the WHO specifications are the specifications to be followed. Accordingly, it is unclear what (structure and function) is covered by the claim.

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Art Unit: 3728

6. Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Simpson (4,452,358) in view of Simpson 5,039,004, Withers 5,163,375, Brugh, Jr. et al (3,886,017) and Newborough et al (5,193,740). In the reference of Simpson ('358), there is provided a medical appliance disposal container made of fiberboard, internally coated with an absorbent material and externally coated with an absorbent resistant material, so that the container is liquid-proof but is capable of absorbing biological liquid placed therein (see col. 5, lines 39-65).

However, as is indicated in the teaching of the reference Withers et al, at col. 6, lines 17-37, fiberboard (e.g. paperboard etc.) is readily combustible). Accordingly the container disclosed by Simpson ('358) would be easily inflammable.

Although the reference of Simpson ('358) doe not disclose making of the container with both recirculated and quality sorted paper/cardboard), the reference of Brough, Jr et al suggests that the paperboard of a moisture impermeable container may be suitably made with a combination of recycled and virgin pulps. This would provide less of an environmental impact. Moreover, selection of a known material based upon its suitability for the intended use thereof generally will not support patentability. In re Leshin, 125 USPQ 416. For these reasons, it would have been obvouos to have made the paperboard of Simpson ('358) with recirculated and quality selcted paper.

Although the reference of Simpson ('358) does not disclose printed instructions for use, the reference of Simpson ('004), at column 3, line 68 through column 4, line 4, suggests that a container for biohazard material may be marked with a hazardous waste warning to medical personnel. This would warn personnel of the type of waste to go into the container. Accordingly, it would have further been obvious in view of Simpson ('004) to

Art Unit: 3728

have provided user-instructions printed on the side of the container of Simpson ('358) for the purpose of instructing medical personnel in the use of the container.

The reference of Newborough et al, at 31,33,35 and column 4, line 60 through column 5, line 8, suggests that a medical waste disposal container may be provided with a box over-side closable orifice (at 33; foldable to line 35) and with a box longer-side ignition opening (at 31; foldable to line 37) for receiving a firelighter. As with Applicant's invention, the orifice suggested is connected to the opening. Additionally, the reference further suggests temporarily covering the orifice and opening with a cover leaf, such as shown in any of the Figures of drawings, for the purpose of closing the orifice as desired. Accordingly, it would have further been obvious in view of Newborough et al to have provided the container of Simpson ('358), as modified above with an over-side orifice, a side wall ignition opening, and a cover leaf to cover each of the opening and orifice.

Regarding the cover leaf suggested by the Newborough et al reference, it is asserted by the examiner that the leaf of Newborough et al would be inherently capable of being ignited since paperboard is ignitable and since only the interior surface of the paperboard is covered with a metal foil layer. Moreover, the leaf taught by Newborough et al is made of the same material as the remainder of the box which eventually (after a twenty minute delay) is burnt. Accordingly, providing a cover leaf to the box of Simpson ('358) in view of the teaching of Newborough et al would not be preventing the inherent function of the leaf to be set on fire, even though neither the Newborough reference nor the Simpson reference teaches using the cover leaf as a firelighter.

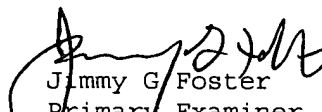
Art Unit: 3728

Regarding the limitation calling for the safety box to be in compliance with the WHO Specifications E10/C.1 and E10/C.2, it is asserted by the Examiner that it would have further been obvious to one having ordinary skill in the art to have followed any legal standard, such as the standards claimed by Applicant.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jimmy G Foster whose telephone number is (571) 272-4554. The examiner can normally be reached on Mon-Fri, 8:45 am - 5:15 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571) 272-4562. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

  
Jimmy G Foster  
Primary Examiner  
Art Unit 3728

JGF  
16 February 2005